Supreme Court, U.S.
FILED

021499 APR 9 - 2003

No.

IN THE

Supreme Court of the United States

IN RE:
REYNA MOTA-HERNANDEZ,

Petitioner

PETITION FOR WRIT OF HABEAS CORPUS

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56pp

QUESTIONS PRESENTED FOR REVIEW

Petitioner petitions this Honorable Court for issuance of ***a writ of habeas corpus*** against those persons or officers seeking to restrain or deprive her liberty, or deny her statutory right to seek relief for removal, under *INA §240A(b), 8 U.S.C. §1229 a(b),* on the ground that that she has met all the statutory and discretionary requirements set forth for eligibility to such relief.

In the alternative, petitioner seeks a declaratory relief from the provisions of the Immigration and Nationality Act *(INA) §242(a)(2)(B)(i), 8 U.S.C. §1252(a)(2)(B)(i),* which removed the jurisdiction of the federal courts to review decisions of the Board of Immigration Appeals (BIA, for brevity), on certain forms of relief from removal, specifically *INA §240A(b), 8 U.S.C. §1229a(b)* (Cancellation of removal for Non-Permanent Residents), on the ground that said provisions are contrary to established doctrine, jurisprudence, and the U.S. Constitution.

PARTIES TO THE PROCEEDING

Petitioner **REYNA MOTA-HERNANDEZ** (who was the respondent in the BIA case), is of legal age, a citizen of Mexico, and a resident of 811 N. 11th Street, Reading, PA 19604, where she can be served with summons and legal processes of this Honorable Court.

Respondent, Hon. John Ashcroft, is being sued in his capacity as Attorney General of the U.S., and may be served with summons, notices and other processes of this Court at United States Department of Justice Civil Division, Office of Immigration Litigation, P.O. Box 878 Ben Franklin Station, Washington D.C. 20044.

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The opinion of the United States Court of Appeals for the 3rd Circuit Court, in C.A. No. 02-2068, entitled "Reyna Mota v. John Ashcroft", which is now the subject matter of the instant petition, is set forth in Appendix A; while the Immigration Judge (IJ) for District of Philadelphia, and BIA's opinions, entered as INS File No. A 74 995 962, are embodied and hereto attached as Appendices "B" and "C", respectively.

STATEMENT OF JURISDICTION

The Supreme Court has jurisdiction over this proceeding under 28 U.S.C. §2241.

STATUTORY PROVISIONS INVOLVED

The questioned provision sought to be declared ***null and void*** is found in INA *§242(a)(2)(B)(i), 8 U.S.C. §1252(a)(2)(B)(i),* entitled ***"Judicial Review of Orders of Removal"***, which provides, thus –

> "Nothwithstanding any other provision of law, no court shall have jurisdiction to review ... any judgment regarding the granting of relief under section 1182(h), 1182(i), 1229b, 1229c or 1225 of this title, or any other decision or action of the Attorney General that authority for which is specified under this chapter to be in the discretion of the Attorney General, other than the granting of relief under section 1158(a)[asylum] of this title."

On the other hand, the "*Relief for Cancellation of Removal for Non-permanent Residents*" is predicated on *INA §240A(b); 8 U.S.C. §1229a(b),* which in summary provides, thus –

Eligibility includes persons who are inadmissible as well as deportable if:

a. They have been physically present in the U.S. for a continuous period of not less than 10 years immediately preceding the date of such application:

   (1) The continuous physical presence requirement is not applicable to a person who has served at least 24 months in active duty status in the Armed Forces and if separated received an honorable discharge and was in the U.S. at the time of her enlistment or induction.

b. They have been a person of good moral character for ten years;

c. They have not been convicted of an offense under INA §§212(a), 237(a)(2) or 237(a)(3); and

d. They establish that removal would result in exceptional and extremely unusual hardship to their spouse, parent, or child, who is a USC or LPR. The applicant's hardship is irrelevant.

STATEMENT OF THE CASE

Procedural History

The Immigration and Naturalization Service ("Service") instituted removal proceedings against petitioner upon service of the Notice to Appear ("NTA") dated July 30, 1997. (Exhibit "1"). In the NTA, the Service charged that petitioner was subject to removal as a native and citizen of Mexico who entered the United States at or near San Ysidro, California on May 15, 1989 without inspection, in accordance with INA §212(a)(6)(A)(i). Petitioner admitted said allegations in the NTA, except for the date of entry to the US, which is 1982. (Tsn, lines 10-17, 2/3/98).

During the Master Calendar Hearing on February 3, 1998, held in Philadelphia, before the sala Hon. IJ Craig DeBernardis, the court suggested that petitioner is eligible for cancellation of removal, if she could prove that she had entered the country in 1982, and that she was out of the US for less than 90 days in the last 16 years. (Tsn, lines 22-25; 1-9, pp. 2-3, Ibid). Moreover, during the continuation of the hearing on April 22, 1998, the IJ allowed petitioner to "go forward with her cancellation of removal xx xx and see if she can meet the other requirements of cancellation." (Tsn, lines 18-23, 4/22/98). The IJ deferred ruling on petitioner's continued physical presence in the US, over the objection of the Government, until the reception of petitioner's oral testimony. (Tsn, lines 21-25;1-4, pp. 14-15, 10/30/98).

In the course of the hearing, *subpoena duces tecum* and *ad testificandum* was served on the attending physician of petitioners' son, to prove the latter's medical condition. More-

over, petitioner testified to substantiate the *bona fides* of her said application.

At the conclusion of the trial, the IJ denied petitioner's application for cancellation of removal *solely on the ground that she could not demonstrate "exceptional and extremely unusual hardship to her USC children.* (Tr. 16). However, her request for voluntary departure was granted. On appeal, the BIA affirmed the IJ's decision. The Court of Appeals (3rd Circuit), on the other hand, dismissed petitioner's petition for review, holding that it has no jurisdiction over the case. Hence, this petitioner for declaratory relief and/or prayer for issuance of the writ of *habeas corpus.*

Summary of Facts of the Case

As culled from the record, the following is a summary of the facts of the case, thus –

Petitioner first came to the United States in 1982 and strayed until April 1986, when she returned to Mexico, to give birth to her oldest daughter. In June of 1986, petitioner returned to the United States. She went back again to Mexico in April, 1989, and stayed there for about a month. Her last entry to the US was on May 15, 1989. Since that time, she never left the US. (Tsn, lines 22-25; 1-20, pp. 21-22, 10/20/98).

Petitioner has four children, whose ages are 12, 7, 5, and 2, respectively, the eldest of whom was born in Mexico of a different father, while the rest were born in the US. (Tsn, lines 4-17, p.19, Ibid). She has a common law husband with whom she lives. Her husband has no legal status in the US

and is the father of her three (3) USC children (Tsn, lines 7-15, Ibid). She also has aunts, uncles, nephews, and cousins in the US who live in California (Ibid).

Petitioner began her first job in the United States at Gilroy California, as a baby sitter and house cleaner for her cousin, Esperanza, from 1982 until 1990. In 1990, she began to work for a company called Lomar from 1990 until 1992. She stopped working at Lomar because her daughter, Lucille Rocio Bernice Fergoso was born prematurely. After Lucille's birth, petitioner went to work with another company, named Christopher Ranch. At said company, she cleaned garlic and onions, and was employed until 1994, during which time she resigned to move in to Pennsylvania (Tsn, lines 1-25;1-23;1-25; 1-8 pp. 23-26, inclusive, Ibid).

From August, 1994 to 1997, petitioner worked at Aramark, where she received ironed sheets. Her employment was terminated when she was apprehended by the Service. All her jobs were full-time. At the time of her merits hearing, petitioner was unemployed. Her common law husband financially supported her and the children. (Tsn, lines 12-25; 1-10; pp. 26-27, Ibid).

Petitioner paid income taxes (Tsn, line 25 – 1, pp. 27-28, Ibid). She was never arrested for any crime. Petitioner never used or sell illegal drugs or narcotics. She received welfare, consisting of stamps, money to pay rent, medicare, etc., from the State, for her daughter who was born prematurely, until she was re-employed. (Tsn, lines 23-24; 1-25; 1-9, pp. 20-31, inclusive, Ibid).

Petitioner has a good relationship with her children, and she attends St. Peter's Church in Reading, Pennsylvania. (Tsn, lines 11-21, p.31, Ibid). If ordered deported, her children will be the most affected because, firstly, they speak little Spanish; her son, Edgar, has asthma and his medicine is expensive, and may not be available in Mexico; she has no residence in that country; and she would not be able to find any job. (Tsn. Lines 22-25; 1-8; 1-5, pp. 31-33, inclusive, Ibid).

She and her common law husband own a house in Reading, Pennsylvania for which they are paying a mortgage. They have put in equity therein equivalent to $4000. She would lose the house if forced to return to Mexico. *She began living in the United States when she was 18 years old and had been here for 16 years.* (Tsn, lines 13-25; 1-10; 1-7, pp. 33-35, inclusive, Ibid).

In her medical report (Exhibit "5"), Dr. Kinbal stated that petitioner's son has a *pectus cavum,* which may present a potential problem, and needs to be operated on.

At the conclusion of the hearing, the IJ gave credence to petitioner's testimony about her physical presence in the United States. The latter also made a finding that petitioner was a person of good moral character. Petitioner was also found to be proficient in the English language, and has ably demonstrated to the court that she has integrated herself in the community of the United States (Tsn, lines 15-24, pp. 17-18, 10/30/98).

ARGUMENT

PETITIONER IS ENTITLED TO THE WRIT ~~OF~~ HABEAS CORPUS, AND TO PETITION FOR DECLARATORY RELIEF TO NULLIFY INA §242(a)(2)(B)(i), 8 U.S.C. §1252(a)(2)(B)(i), FOR BEING CONTRARY TO SETTLED NORM, POLICY, PRACTICE AND PROCEDURE, AND VIOLATIVE OF THE CONSTITUTIONAL PROVISION ON DUE PROCESS OF LAW.

This is one of the instances where the law even if applied harshly, must give way to some considerations in justice and equity.

The rule of ***audi alteram partem*** – hear the other side, is the essence of procedural due process. That a "party is not to suffer in person or in purse without an opportunity of being heard" is the ***oldest*** established principle in administrative law. [Schwartz, *Administrative Law, 1991 ed., p. 224 citing Painter v. Liverpool Gas Co., 3 Ad. & E I. 433, 449, 11 Engl Rep. 478 (K.B. 1836)*].

The subject law, (INA) §242(a)(2)(B)(i), 8 U.S.C. §1252(a)(2)(B)(i), which stripped the federal courts of authority to review most immigration matters, is a blow on the breadbasket of aliens who might be eligible for some form of relief, but were it not for the faulty decision of the agency who heard the case, and a considerable erosion of their constitutional rights to "due process of law".

In Johnson v. Eisentrager, 339 U.S. 763, 770 (1950), it held that "once an alien gains the ties that go with permanent residence, his constitutional status changes accordingly. Our cases have frequently suggested that a *continuously present resident alien* is entitled to a fair hearing when threatened with deportation". (Underline ours).

There can be no room for disagreement that the power to exclude aliens is "an incident of sovereignty". In *Nishimura Ekiu v. U.S.,* 142 U.S. 651, 659 (1892), it was held that, (I)t is an accepted maxim of international law, that every sovereign nation has the power, an inherent in sovereignty, and essential to self-preservation, to forbid the entrance of foreigners within its dominions, or to admit them only in such cases and upon such conditions as it may see fit to prescribe."

However, "the 'due process clause' under the Fourteenth Amendment, does not distinguish between alienage and citizenship. In a long line of cases decided by this Court, it held that "a permanent resident alien returning from a temporary trip abroad would be treated like an alien continuously residing and physically present in the United States, with the result that the former would be entitled as a matter of due process to a hearing on the charges underlying any attempt to exclude him" Barett, Jr. Cohen, Varat, *"Constitutional Law" 8th Ed., Sec. 2, Chapter 8 'The Fourteenth Amendment and Citizenship' (1989).*

Hence, taken against the backdrop of the instant case, there is a need for a re-examination of INA §242(a)(2)(B)(i), 8 U.S.C. §1252(a)(2)(B)(i), to see whether or not "due process" can be applied as a limitation on the acts of Congress to

pass said law, or to temper its provisions, or at the very least, provide clear-cut exceptions.

Petitioner's stand is that this ***overly restrictive*** statute will sap the due process right of certain aliens, who may have all the qualifications and none of the disqualifications to be eligible for naturalization, of its remaining utility. Indeed, the amended law, which repealed INA §106, 8 U.S.C. §1105a, clipping the powers of the federal courts to review administrative process is a throwback to a regime of law long discarded by progressive countries. Today, judicial review of administrative rulings is a settled norm in administrative law.

What hurts even mostly is that while the BIA can be expansive, and sometimes considerate, to some degree in its decisions favoring certain aliens, it was not so with herein petitioner.

A case in point is *"In re Recinas, et al."*, 23 I&N Dec. 467, decided on May 18, 2002, where the BIA "overturned the decision of an immigration judge denying cancellation of removal under INA §240A(b), 8 U.S.C. §1229b(a), to a single mother of six children – four of whom are U.S. citizens – finding that these children would suffer exceptional and extremely unusual hardship upon their mother's removal in Mexico.

"In its effort to distinguish this case from its predecessors, the Board explained that the hardship factors present in this case are *different in degree* rather than in type from those in "*Matter of Monreal*", 23 I&N Dec. 56 (BIA 2001), and "*Matter of Andazola*", 23 I&N Dec. 319 (BIA 2002). The Board noted that its determination in the instant case turns on

the *totality of the hardship* to the four U.S. citizen children and their mother, the respondent. (Underline ours).

"Interestingly, the Board also found that in a single parent family, the hardship of the parent inherently translates into hardship to all six children. (Valentin Brown, *"BIA Cancels Removal of Mother of 6, Holds IJ Erred in Contrary Finding", article published in the AILA Immigration Law Today Practice Advisories).*

However, unlike the ruling set forth in "In re Recinas" above, petitioner's allegations of hardship did not appeal to the senses of the Board, which ignored the "totality of the hardship" standard, despite its almost similarity with the facts obtaining in said "In re Recinas", except for the "single parent family".

Since the medical condition of petitioner's child, Edgar, is not "life threatening", and should he accompany his mother to Mexico, he still could buy the same medicines for his illness, the IJ in this case concluded, that petitioner is not entitled to the relief prayed for. Moreover, opined the IJ, even if Edgar did not leave the US, he will not require unusual medical treatment which necessitates his mother's presence in the country, but may be taken care of here by his father and other relatives.

Curiously, the IJ failed to consider other factors evincing hardship, alongside the statutory eligibility of petitioner, which purport to establish the fact that: a) she began living in the United States when she was 18 years old and had been here for 16 years. (Tsn, lines 13-25; 1-10; 1-7, pp.33-35, inclusive, Ibid); b) she has four children, whose ages are 12, 7,

5 and 2; c) she has aunts, uncles, nephews, and cousins in the U.S. who live in California (Ibid); d) she held jobs in the US, and paid income taxes; e) she owns a house, wherein she has equity, and still continues to pay on the mortgage; (f) she has neither a criminal record, nor violated any law; g) she does not pose a danger to the community, but on the contrary, has assimilated herself as a *bona-fide* member; h) her children speak little Spanish; i) her son, Edgar, has asthma and his medicine is expensive, and may not be available in Mexico; j) she has no residence in that country; and would find difficulty in searching for a job. (Tsn. Lines 22-25; 1-8; 1-5, pp. 31-33, inclusive, Ibid). And, finally, she will eventually lose the house wherein her husband and children presently live, granting she could no longer pay the amortizations due therein. (Tsn, lines 13-25; 1-10; 1-7, pp. 33-35, inclusive, Ibid). If the BIA would not determine these factors to be different in degree, then what supposedly should them be?

And, as if there was any consolation to be derived from his adverse ruling, the IJ remarked, thus –

> "You have a right to appeal this decision to a higher Court. If you want to appeal you can stay in the country while the higher Court considers the case. That will take at least one year. And, in that time maybe Ms. Jones can do something else to help you get a green card. xx xx xx. There is no reason for panic, there is no reason for tears, nothing is going to happen right away. Post the bond, file the appeal, see what Ms. Jones can do about getting you a green card some other way. You are a good person, ma'am. If I could grant things to

somebody just because they are a good person I would have granted it to you"

Almost six (6) years have elapsed since the enactment of the immigration Reform Act of 1996, which contains the provision subject matter of this case, and our experience is not a happy one. Certain constitutional challenges may bound to come up in the future litigating this particular issue. This is to be expected. According to one noted immigration lawyer, "(F)rom an administrative and constitutional law perspective, the immigration system is failing on many fronts. First, Congress' decision in 1996 to create over 17 different preclusion statutes has hindered the normal administrative review process. xx xx xx. The lack of review simply encourages unchecked, arbitrary conduct on the part of the INS officers." (*"On the Record with Ira J. Kurzban"*, reprinted from the article of the same title published in Immigration Law Today, Vol. 22, No. 2, p35).

The result, as many experts believe, is that restrictive laws will not curtail illegal immigration. They will just create more roadblocks up ahead, with a tendency to confuse the whole system. The ugly truth is that these preclusion statutes will someday become the *mother of many unjust and unfair dismissal of cases*, and aliens, especially those eligible for naturalization, may be too weak to challenge INS' decisions. As INA §242(a)(2)(B)(i), 8 U.S.C. §1252(a)(2)(B)(i) has proved to be highly inimical to the interest of qualified aliens, we humbly submit to the return of the pre-IIRIRA law, under INA §106, 8 U.S.C. §1105a, where judicial review would be the general rule, rather than the exception.

In fine, this Honorable Court should strike down INA §242(a)(2)(B)(i), 8 U.S.C. §1252(a)(2)(B)(i), as violative of the "due process clause" of the Fourteenth Amendment, for we cannot be disciples of the Machiavellian doctrine of the end justifies the means. With due respect, said statute comes too near this mischievous doctrine by giving emphasis on the end and not the means of affording the right or opportunity to be heard. *This is the only wrinkle wrought by this statute.* What grates is that the INS espouses a doctrine more pernicious than the pre-IIRIRA days, for now it announces that non-judicial review of administrative decisions does not even concern due process.

CONCLUSION

WHEREFORE, it is respectfully prayed that this Honorable Court grant petitioner's request for issuance of a *writ of habeas corpus* directing all persons or any officer having jurisdiction over the instant case, against unlawfully restraining or depriving petitioner of her right to liberty from being removed to Mexico, and to enforce her statutory right to seek relief from such removal. As an ancillary relief, to order the *status quo* of the case, declare null and void the provisions of INA §242(a)(2)(B)(i), 8 U.S.C. §1252(a)(2)(B)(i), as contrary to settled norm and jurisprudence, and to grant the reliefs prayed for by petitioner in the instant petition.

Respectfully submitted,

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APPENDIX A – USCA 3RD CIRCUIT COURT DECISION DATED JANUARY 10, 2003, DISMISSING THE PETITION FILED BY OUR CLIENT

January 10, 2003

United States Court of Appeals for the Third Circuit

To:

Steven A. Morely, Esq.
William C. Minick, Esq.
Michael P. Lindemann, Esq.

NOTICE OF ORDER

A Case Dispositive Order was entered today in case No. **02-2068** and a copy is enclosed herewith. If you wish to seek review by the Court of the Court's order, you may file a petition for rehearing. The procedure for filing a petition for rehearing is outlined below.

PETITION FOR REHEARING

(FRAP 40 and Third Circuit LAR 35 and IOP Chapter 9)

Rehearing by the Court en banc pursuant to Rule 40, Federal Rules of Appellate Procedure, is not favored. Third Circuit LAR 35.4. In regard to when rehearing by the court en banc might be granted, your attention is specifically directed to Third Circuit IOP Chapter 9:

IOP 9.3 Criteria for Rehearing en banc.

IOP 9.3.1 This court strictly follows the precept of Rule 35(a), Federal Rules of Appellate Procedure and Local Appellate Rule 35.4, that rehearing en banc is not favored and will not be ordered unless consideration by the full court is necessary to secure or maintain uniformity of its decisions or the proceeding involves a question of exceptional importance.

IOP 9.3.2 This court does not ordinarily grant rehearing en banc when the panel's statement of the law is correct and the controverted issue is solely the application of the law to the circumstances of the case.

IOP 9.3.3 Rehearing en banc is ordinarily not granted when the only issue presented is one of state law.

Nor, except in rare cases, has the court granted rehearing en banc where the case was decided by a judgment order, a memorandum opinion, or unpublished per curiam opinion.

IOP 9.5 Rehearing en banc on Petition by Party.

IOP 9.5.1 It is presumed that a petition for rehearing before the panel or suggestion for en banc rehearing filed by a party as provided by Rule 35 (b) or 40 (a), Federal Rules of Appellate Procedure, requests both panel rehearing and rehearing en banc, unless the petition for panel rehearing under Rule 40 (a) states explicitly that it does not request en banc rehearing under Rule 35 (b).

Statement of Counsel

Where the party petitioning for rehearing en banc is represented by counsel, pursuant to Third Circuit LAR 35.1 the petition shall contain, so far as is pertinent, the following statement of counsel:

> "I express a belief, based on a reasoned and studied professional judgment, that the panel decision is contrary to decisions of the United States Court of Appeals for the Third Circuit or the Supreme Court of the United States, and that consideration by the full court is necessary to secure and maintain uniformity of decisions in this Court, to-wit, the panel's decision is contrary to the decision of this Court or the Supreme Court in [citing specifically the case or cases],
>
> Or, that is appeal involves a question of exceptional importance, to-wit [set forth in on sentence]."

The filing of petitions for rehearing or rehearing en banc is not favored. Rule 35, Federal Rules of Appellate Procedure and Third Circuit LAR 35.4. Counsel is reminded that a duty is owed to the Court commensurate with that owed to their clients not to file petitions for rehearing en banc which do not meet the rigorous requirements of Rule 35, Federal Rules of Appellate Procedure and Third Circuit LAR 35.1.

Attachments

Pursuant to Third Circuit LAR 32.3 (b) and 35.2 attached to each petition for rehearing must be a copy of the judgment, order or decision of the Court as to which rehearing is sought and any memorandum or opinion of the court stating the reasons therefore.

Filing Time

A petition for rehearing may be filed within 14 days of the date that Court's judgment or final decision was entered on the docket unless the appeal is a civil case in which the United States is a party. Rule 40(a), Federal Rules of Appellate Procedure. In a civil case in which the United States is a party, any petition for rehearing must be filed within 45 days of entry of the Court's final judgment or decision. Id. **These filing deadlines are calculated from the date of the enclosed order.** No extension will be granted save for the most compelling reasons. The petition must be received in the Clerk's office within the time permitted for filing a petition. A petition is filed as of the date of receipt and **not** of mailing.

Pursuant to Rule 35 (c), Federal Rules of Appellate Procedure, any request for rehearing by the Court en banc must be filed at the same time that a petition for panel rehearing is filed. Neither the Court's

rules nor its Internal Operating Procedures allow a process in which a subsequent request for rehearing en banc is filed after a petition for panel rehearing has been denied.

Form, Answer

The 15-page limit allowed by the Rule shall be strictly observed. This page limit will also be applied to any answer that the Court may request be filed.

A petition for rehearing, and any answer thereto, must comply with the requirements of Rule 32 (a), Federal Rules of Appellate Procedure and Third Circuit LAR 32.1 as to form, typeface, spacing, footnotes, etc. Colored covers are not required.

The petition shall state with particularity the points of law or fact which in the opinion of the petitioner the court has overlooked or misapprehended and shall contain such argument in support of the petition as the petitioner desires to present. No answer to a petition for rehearing will be received unless requested by the court. Rule 40 (a), Federal Rules of Appellate Procedure. Oral argument in support of the petition will not be permitted.

Number of Copies

An original and 15 copies of a petition for rehearing before the Court en banc is required.

An original and 3 copies of a petition for rehearing before the original panel is required.

Certificate of Service for Institutional or Incarcerated Litigant

Certification of Service

In addition to including a certificate of service, all litigants who are currently institutionalized or incarcerated would include the following statement on all documents to be filed with this Court:

I certify that this document was given to prison officials on **[date]** for forwarding to the Court of Appeals. I certify under penalty of perjury that the foregoing is true and correct. 28 U.S.C. Sec. 1746.

MARCIA M. WALDRON
Clerk
By: Carmella L. Wells
Case Manager
Direct Dial 267-299-4928

Enclosure
Rev. 1/95

APPENDIX B – USCA 3RD CIRCUIT COURT ORDER DATED OCTOBER 31, 2002, DENYING OUR CLIENT'S MOTION FOR CANCELLATION OF REMOVAL ON THE GROUND OF LACK OF JURISDICTION

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

C.A. No 02-2068

REYNA MOTA,

Petitioner

v.

JOHN ASHCROFT, Attorney General of the United States,

Respondent

(Agency No. A74 995 962)

Present: ALITO, ROTH and RENDELL, CIRCUIT JUDGES

Submitted are:

(1) Respondent's Motion to Dismiss for Lack of Jurisdiction; and

(2) Petitioner's Opposition to Respondent's Motion to Dismiss, in the above-captioned case.

Respectfully,

Clerk

MMW/CAD/clw/jle

ORDER

The foregoing motion to dismiss for lack of jurisdiction is granted. Mota seeks review of the Board of Immigration Appeals' denial of her motion for cancellation of removal. The Board upheld that Immigration Judge's finding that Mota had not established that her removal would "result in exceptional and extremely unusual hardship" to her U.S. citizen children. Pursuant to 8 U.S.C. § 1252(a)(2)(B)(i) [INA § 242(a)(2)(B)(i)], "no court shall have jurisdiction to review- any judgment regarding the granting of relief under section . . . 1229b [cancellation of removal]." Thus, we lack jurisdiction to consider her petition for review. *See Montero-Martinez v. Ashcroft,* 277 F.3d 1137 (9th Cir. 2001), (§ 1252(a)(2)(B)(i) bars review of discretionary judgments made in connection with cancellation of removal).

By the Court,

_____

Circuit Judge
Dated: Jan 10 2003
CLW/cc: Steven A. Morely, Esq.
William C. Minick, Esq.
Michael P. Lindermann, Esq.

APPENDIX C – DECISION OF THE BIA DATED MARCH 20, 2002, AFFIRMING THE DENIAL OF THE IJ'S DECISION, OF OUR CLIENT'S APPLICATION FOR CANCELLATION OF REMOVAL

Decision of the Board of Immigration Appeals

U.S. Department of Justice
Executive Office for Immigration Review
Falls Church, Virginia 22041

File: A74 995 962 – Philadelphia

Date: March 20, 2002

In re: REYNA MOTA-HERNANDEZ

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Margot S. Jones, Esq.

ORDER:

PER CURIAM. The respondent has appealed the Immigration Judge's denial of her application for cancellation of removal under section 240A(b) of the Immigration and Nationality Act, 8 U.S.C. § 1229b(b). We have reviewed the record of proceeding, the Immigration Judge's decision, and the respondent's contentions on appeal. The decision of the Immigration Judge is affirmed based upon and for the rea-

sons stated therein. *See Matter of Burbano,* 20 I&N Dec. 872, 874 (BIA 1994). The appeal is dismissed.

On appeal, the respondent reiterates the facts of her case which she believes supports a finding that her three United States citizen children would face exceptional and extremely unusual hardship if the respondent is removed to Mexico.

We find no error by the Immigration Judge. In his decision, the Immigration Judge considered the factors mentioned by the respondent in her appeal. In particular, the Immigration Judge found that the respondent's evidence did not establish that her son Edgar suffered from any serious medical condition (I.J. at 2-3). We note that Congress intended the exceptional and extremely unusual hardship requirement of section 240A(b) of the Act "to heighten the degree of hardship" to "emphasize that the alien must provide evidence of harm substantially beyond that which ordinarily would be expected to result from an alien in deportation." H.R. Conf. Rep. 104-828 (1996). *See Matter of Monreal,*23 I&N Dec. 56 (BIA 2001) (holding that an applicant for cancellation of removal under section 240A(b) of the Act must demonstrate hardship beyond that which has historically been required in suspension of deportation cases involving the "extreme hardship" standard). We find no error in the Immigration Judge's decision finding that the hardship to the respondent's three United States citizen children does not rise to the level of exceptional and extremely unusual. *See* section 240A(b)(1)(D) of the Act.

Because the Immigration and Naturalization Service did not appeal the Immigration Judge's finding that the respondent was a person of good moral character, we need not ad-

dress the respondent's contentions on appeal regarding that issue.

Accordingly, the appeal is dismissed.

FURTHER ORDER: Pursuant to the Immigration Judge's order and conditioned upon compliance with conditions set forth by the Immigration Judge and the statute, the respondent is permitted to voluntarily depart from the United States, without expense to the Government, within 30 days from the dated of this order or any extension beyond that time as may be granted by the district director. *See* section 240B(b) of the Immigration and Nationality Act; 8 C.F.R. §§ 240.26(c), (f). In the event the respondent fails to so depart, the respondent shall be removed as provided in the Immigration Judge's order.

NOTICE: If the respondent fails to depart the United States within the time period specified, or any extensions granted by the district director, the respondent shall be subject to a civil penalty of not less than $1,000 and not more than $5,000, and shall be ineligible for a period of 10 years for any further relief under section 240B and sections 240A, 245, 248, and 249 of the Immigration and Nationality Act. *See* section 240B(d) of the Act.

FOR THE BOARD

APPENDIX D – SUMMARY OF THE ORDER OF THE IJ DATED APRIL 19, 1999, DENYING OUR CLIENT'S APPLICATION FOR CANCELLATION OF REMOVAL; AND ORAL DECISION OF THE IJ

IMMIGRATION COURT
1600 CALLOWHILL ST., SUITE 400
PHILADELPHIA, PA 19130

In the Matter of Case No.: A74-995-962

MOTA-HERNANDEZ, REYNA

Respondent

IN REMOVAL PROCEEDINGS

ORDER OF THE IMMIGRATION JUDGE

This is a summary of the oral decision entered on Apr 19, 1999.

This memorandum is solely for the convenience of the parties. If the proceedings should be appealed or reopened, the oral decision will become the official opinion in the case.

[ ] The respondent was ordered removed from the United States to or in the alterative to

[ ] Respondent's application for voluntary departure was denied and respondent was ordered removed to alternative to

[X] Respondent's application for voluntary departure was granted until June 19, 1999 upon posting a bond in the amount of $ 500.00 with alternate order of removal to Mexico.

[ ] Respondent's application for asylum was ( ) granted ( )denied ( ) withdrawn.

[ ] Respondent's application for withholding of removal was ( ) granted ( ) denied ( ) withdrawn

[ ] Respondent's application for cancellation of removal under section 240A(a) was ( ) granted ( ) denied ( ) withdrawn

[X] Respondent's application for cancellation of removal was ( ) granted
(X) denied dfdfsaf ( ) withdrawn. If granted, it was ordered that the respondent be issued all appropriate documents necessary to give effect to this order.

[ ] Respondent's application for a waiver under section of the INA was ( ) granted ( ) denied ( ) withdrawn or ( ) other

[ ] Respondent's application for adjustment of status under section of the INA was ( ) granted ( ) denied ( ) withdrawn. If granted, it was ordered that respondent be issued all appropriate documents necessary to give effect to this order.

[ ] Respondent's status was rescinded under section 246.

[ ] Respondent is admitted to the United States as a _____until _____.

[ ] As a condition of admission, respondent is to post a $ _____bond.

[ ] Respondent knowingly filed a frivolous asylum application after proper notice.

[X] Respondent was advised of the limitation on discretionary relief for failure to appear as ordered in the Immigration Judge's oral decision.

[ ] Proceedings were terminated.

[ ] Other:_____

Date: Apr 19, 1999

Appeal: WAIVED Appeal Due By: May 19, 1999

_____

CRAIG DE BERNARDIS
Immigration Judge

CERTIFICATE OF SERVICE

THIS DOCUMENT WAS SERVED BY:
MAIL (M) PERSONAL SERVICE (P)

TO: [ ] ALIEN [ ] ALIEN c/o Custodial Officer [ ] ALIEN'S ATT/REP [ ] INS

DATE: April 19, 1999

By: COURT STAFF _____

Attachments: [ ] EOIR-33 [ ] EOIR-28 [ ] Legal Services List [ ] Other

APPENDIX E – NOTICES OF HEARING (MASTER/INDIVIDUAL) DATED NOVEMBER 2, 1998; JANUARY 14, 1999; FEBRUARY 23, 1999; AND MARCH 2, 1999 INCLUSIVE

NOTICE OF HEARING IN REMOVAL PROCEEDINGS
IMMIGRATION COURT
1600 CALLOWHILL ST. SUITE 400
PHILADELPHIA, PA 19130

RE: MOTA-HERNANDEZ, REYNA

FILE: A74-995-962 DATE: MARCH 2, 1999

TO: MARGOT S. JONES
JAY BAGIA ESQUIRE, THE BOURSE BLDG STE 592
111 SOUTH INDEPENDENCE MALL EA
PHILADELPHIA, PA 19106

Please take notice that the above captioned case has been scheduled for a Master/Individual hearing before the Immigration Court on 4-19-99 at 12:00 p.m. at

1600 Callowhill St. Suite 400

Philadelphia, PA 19130

You may be represented in these proceedings, at no expense to the Government, by an attorney or other individual who is authorized and qualified to represent persons before an Immigration Court. Your hearing date has not been scheduled earlier that 10 days from the date of service of the Notice to Appeal in order to permit you the opportunity to obtain an attorney or representative. If you wish to be represented, your attorney or representative must appear with you at the hearing prepared to proceed. You can request an earlier hearing in writing.

Failure to appear at your hearing except for exceptional circumstances may result in one or more of the following actions:

1) You may be taken into custody by the Immigration and Naturalization Service and held for further action.

2) Your hearing may be held in your absence under section 240 (b) (5) of the Immigration and Nationality Act. An order or removal will be entered against you if the Immigration and Naturalization Service established by clear, unequivocal and convincing evidence that a) you or your attorney has been provided this notice and b) you are removable.

IF YOUR ADDRESS IS NOT LISTED ON THE NOTICE TO APPEAR, OR IF IT IS NOT CORRECT, WITHIN FIVE DAYS OF THIS NOTICE YOU MUST PROVIDE TO THE IMMIGRATION COURT PHILADELPHIA, PA THE ATTACHED FORM EOIR-33 WITH YOUR ADDRESS AND/OR TELEPHONE NUMBER AT WHICH YOU CAN

BE CONTACTED REGARDING THESE PROCEEDINGS. EVERYTIME YOU CHANGE YOUR ADDRESS AND/OR TELEPHONE NUMBER, YOU MUST INFORM THE COURT OF YOUR NEW ADDRESS AND/OR TELEPHONE NUMBER WITHIN 5 DAYS OF THE CHANGE ON THE ATTACHED FORM EOIR-33. ADDITIONAL FORMS EOIR-33 CAN BE OBTAINED FROM THE COURT WHERE YOU ARE SCHEDULED TO APPEAR. IN THE EVENT YOU ARE UNABLE TO OBTAIN A FORM EOIR-33, YOU MAY PROVIDE THE COURT IN WRITING WITH YOUR NEW ADDRESS AND/OR TELPHONE NUMBER BUT YOU MUST CLEARLY MARK THE ENVELOPE "CHANGE OF ADDRESS." CORRESPONDENCE FROM THE COURT, INCLUDING HEARING NOTICES, WILL BE SENT TO THE MOST RECENT ADDRESS YOU HAVE PROVIDED, AND WILL BE CONSIDERED SUFFICIENT NOTICE TO YOU AND THESE PROCEEDINGS CAN GO FORWARD IN YOUR ABSENCE.

A List of Free Legal Service Providers has been given to you. For information regarding the status of your case, call toll free 1-800-898-7180

LIMITATION ON DISCRETIONARY RELIEF FOR FAILURE TO APPEAR

(X) 1. You have been scheduled for a removal hearing, at the time and place set forth on the attached sheet. Failure to appeal for this hearing other that because of exceptional circumstances beyond your control** will result in your being found in

eligible for certain forms of relief under the Immigration and Nationality Act (see Section A. below) for a period of ten (10) years after the dated of entry of the final order of removal.

( ) 2. You have been scheduled for any asylum hearing, at the time and place set forth on the attached notice. Failure to appear for this hearing other that because of exceptional circumstances beyond your control** will result in your being found ineligible for certain forms of relief under the Immigration and Nationality Act (see Section A. Below) for a period of ten (10) years from the dated of your scheduled hearing.

( ) 3. You have been granted voluntary departure from the United States pursuant to section 240B of the Immigration and Nationality Act, and remaining in the United States beyond the authorized date will result in your being found ineligible for certain forms of relief under the Immigration and Nationality Act (see Section A. Below) for ten (10) years from the dated of the scheduled departure. Your Voluntary departure bond, if any, will also be breached. Additionally, if you fail to voluntarily depart the United States within the time period specified, you shall be subject to a civil penalty of not less than $ 1,000 and not more than $5,000.

** the term "exceptional circumstances" refers to circumstances such as serious illness of the alien

or death of an immediate relative of the alien, but not including less compelling circumstances.

A. THE FORMS OF RELIEF FROM REMOVAL FOR WHICH YOU WILL BECOME INELIGBLE ARE:

1) Voluntary departure as provided for in section 240B of the Immigration and Nationality Act;

2) Cancellation of removal as provided for in section 240A of the Immigration and Nationality Act; and

3) Adjustment of status or change of status as provided for in Section 245, 248 or 249 of the Immigration and Nationality Act.

This written notice was provided to the alien in English. Oral notice of the contents of this notice must be given to the alien in his/her native language, or in a language he/she understands by the Immigration Judge.

Date: Mar 2, 1999

Immigration Judge: _____or Court Clerk:_____

CERTIFICATE OF SERVICE

THIS DOCUMENT WAS SERVED BY: MAIL (M) PERSONAL SERVICE (P)

TO: [ ] ALIEN [ ] ALIEN c/o Custodial Officer [ ] ALIEN'S ATT/PEP [X] INS

DATE: 3-2-99 BY: COURT STAFF _____

Attachments: [X] EOIR-33 [X] EOIR-28 [X] Legal Services List [ ] Other

NOTICE OF HEARING IN REMOVAL PROCEEDINGS
IMMIGRATION COURT
1600 CALLOWHILL ST. SUITE 400
PHILADELPHIA, PA 19130

RE: MOTA-HERNANDEZ, REYNA

FILE: A74-995-962

DATE: Feb 23, 1999

TO: MARGOT S. JONES

JAY BAGIA ESQ, THE BOURSE BLDG STE 592

111 SOUTH INDEPENDENCE MALL EA

PHILADELPHIA, PA 19106

Please take notice that the above captioned case has been scheduled for a Master/Individual hearing before the Immigration Court on 03-02-99 at 9 a.m.. at

1600 Callowhill St. Suite 400

Philadelphia, PA 19130

You may be represented in these proceedings, at no expense to the Government, by an attorney or other individual who is authorized and qualified to represent persons before an Immigration Court. Your hearing date has not been scheduled earlier that 10 days from the date of service of the

Notice to Appeal in order to permit you the opportunity to obtain an attorney or representative. If you wish to be represented, your attorney or representative must appear with you at the hearing prepared to proceed. You can request an earlier hearing in writing.

Failure to appear at your hearing except for exceptional circumstances may result in one or more of the following actions:

1) You may be taken into custody by the Immigration and Naturalization Service and held for further action.

2) Your hearing may be held in your absence under section 240 (b) (5) of the Immigration and Nationality Act. An order or removal will be entered against you if the Immigration and Naturalization Service established by clear, unequivocal and convincing evidence that a) you or your attorney has been provided this notice and b) you are removable.

IF YOUR ADDRESS IS NOT LISTED ON THE NOTICE TO APPEAR, OR IF IT IS NOT CORRECT, WITHIN FIVE DAYS OF THIS NOTICE YOU MUST PROVIDE TO THE IMMIGRATION COURT PHILADELPHIA, PA THE ATTACHED FORM EOIR-33 WITH YOUR ADDRESS AND/OR TELEPHONE NUMBER AT WHICH YOU CAN BE CONTACTED REGARDING THESE PROCEEDINGS. EVERYTIME YOU CHANGE YOUR ADDRESS AND/OR TELEPHONE NUMBER, YOU MUST INFORM THE COURT OF YOUR NEW ADDRESS AND/OR TELEPHONE NUMBER WITHIN 5 DAYS OF THE CHANGE

ON THE ATTACHED FORM EOIR-33. ADDITIONAL FORMS EOIR-33 CAN BE OBTAINED FROM THE COURT WHERE YOU ARE SCHEDULED TO APPEAR. IN THE EVENT YOU ARE UNABLE TO OBTAIN A FORM EOIR-33, YOU MAY PROVIDE THE COURT IN WRITING WITH YOUR NEW ADDRESS AND/OR TELPHONE NUMBER BUT YOU MUST CLEARLY MARK THE ENVELOPE "CHANGE OF ADDRESS." CORRESPONDENCE FROM THE COURT, INCLUDING HEARING NOTICES, WILL BE SENT TO THE MOST RECENT ADDRESS YOU HAVE PROVIDED, AND WILL BE CONSIDERED SUFFICIENT NOTICE TO YOU AND THESE PROCEEDINGS CAN GO FORWARD IN YOUR ABSENCE.

A List of Free Legal Service Providers has been given to you. For information regarding the status of your case, call toll free 1-800-898-7180

LIMITATION ON DISCRETIONARY RELIEF FOR FAILURE TO APPEAR

( ) 1. You have been scheduled for a removal hearing, at the time and place set forth on the attached sheet. Failure to appeal for this hearing other that because of exceptional circumstances beyond your control** will result in your being found ineligible for certain forms of relief under the Immigration and Nationality Act (see Section A. below) for a period of ten (10) years after the dated of entry of the final order of removal.

( ) 2. You have been scheduled for any asylum hearing, at the time and place set forth on the at-

tached notice. Failure to appear for this hearing other that because of exceptional circumstances beyond your control** will result in your being found ineligible for certain forms of relief under the Immigration and Nationality Act (see Section A. Below) for a period of ten (10) years from the dated of your scheduled hearing.

( ) 3. You have been granted voluntary departure from the United States pursuant to section 240B of the Immigration and Nationality Act, and remaining in the United States beyond the authorized date will result in your being found ineligible for certain forms of relief under the Immigration and Nationality Act (see Section A. Below) for ten (10) years from the dated of the scheduled departure. Your Voluntary departure bond, if any, will also be breached. Additionally, if you fail to voluntarily depart the United States within the time period specified, you shall be subject to a civil penalty of not less than $ 1,000 and not more than $5,000.

** the term "exceptional circumstances" refers to circumstances such as serious illness of the alien or death of an immediate relative of the alien, but not including less compelling circumstances.

A. THE FORMS OF RELIEF FROM REMOVAL FOR WHICH YOU WILL BECOME INELIGBLE ARE:

1) Voluntary departure as provided for in section 240B of the Immigration and Nationality Act;

2) Cancellation of removal as provided for in section 240A of the Immigration and Nationality Act; and

3) Adjustment of status or change of status as provided for in Section 245, 248 or 249 of the Immigration and Nationality Act.

This written notice was provided to the alien in English. Oral notice of the contents of this notice must be given to the alien in his/her native language, or in a language he/she understands by the Immigration Judge.

Date: Feb 23, 1999

Immigration Judge: _____ or Court Clerk: _____

CERTIFICATE OF SERVICE

THIS DOCUMENT WAS SERVED BY:

MAIL (M) PERSONAL SERVICE (P)

TO: [ ] ALIEN [ ] ALIEN c/o Custodial Officer [ ] ALIEN'S ATT/PEP [X] INS

DATE: 2-23-99 BY: COURT STAFF

Attachments: [X] EOIR-33 [X] EOIR-28 [X] Legal Services List [ ] Other

NOTICE OF HEARING IN REMOVAL PROCEEDINGS
IMMIGRATION COURT
1600 CALLOWHILL ST. SUITE 400
PHILADELPHIA, PA 19130

RE: MOTA-HERNANDEZ, REYNA

FILE: A74-995-962

DATE: Jan 14, 1999

TO: MARGOT S. JONES

JAY BAGIA ESQ, THE BOURSE BLDG STE 592

111 SOUTH INDEPENDENCE MALL EA

PHILADELPHIA, PA 19106

Please take notice that the above captioned case has been scheduled for a Master/Individual hearing before the Immigration Court on Feb 23, 1999 at 9:00 A.M. at

1600 Callowhill St. Suite 400

Philadelphia, PA 19130

You may be represented in these proceedings, at no expense to the Government, by an attorney or other individual who is authorized and qualified to represent persons before an Immigration Court. Your hearing date has not been scheduled earlier that 10 days from the date of service of the

Notice to Appeal in order to permit you the opportunity to obtain an attorney or representative. If you wish to be represented, your attorney or representative must appear with you at the hearing prepared to proceed. You can request an earlier hearing in writing.

Failure to appear at your hearing except for exceptional circumstances may result in one or more of the following actions:

1) You may be taken into custody by the Immigration and Naturalization Service and held for further action.

2) Your hearing may be held in your absence under section 240 (b) (5) of the Immigration and Nationality Act. An order or removal will be entered against you if the Immigration and Naturalization Service established by clear, unequivocal and convincing evidence that a) you or your attorney has been provided this notice and b) you are removable.

IF YOUR ADDRESS IS NOT LISTED ON THE NOTICE TO APPEAR, OR IF IT IS NOT CORRECT, WITHIN FIVE DAYS OF THIS NOTICE YOU MUST PROVIDE TO THE IMMIGRATION COURT PHILADELPHIA, PA THE ATTACHED FORM EOIR-33 WITH YOUR ADDRESS AND/OR TELEPHONE NUMBER AT WHICH YOU CAN BE CONTACTED REGARDING THESE PROCEEDINGS. EVERYTIME YOU CHANGE YOUR ADDRESS AND/OR TELEPHONE NUMBER, YOU MUST INFORM THE COURT OF YOUR NEW ADDRESS AND/OR TELEPHONE NUMBER WITHIN 5 DAYS OF THE CHANGE

ON THE ATTACHED FORM EOIR-33. ADDITIONAL FORMS EOIR-33 CAN BE OBTAINED FROM THE COURT WHERE YOU ARE SCHEDULED TO APPEAR. IN THE EVENT YOU ARE UNABLE TO OBTAIN A FORM EOIR-33, YOU MAY PROVIDE THE COURT IN WRITING WITH YOUR NEW ADDRESS AND/OR TELPHONE NUMBER BUT YOU MUST CLEARLY MARK THE ENVELOPE "CHANGE OF ADDRESS." CORRESPONDENCE FROM THE COURT, INCLUDING HEARING NOTICES, WILL BE SENT TO THE MOST RECENT ADDRESS YOU HAVE PROVIDED, AND WILL BE CONSIDERED SUFFICIENT NOTICE TO YOU AND THESE PROCEEDINGS CAN GO FORWARD IN YOUR ABSENCE.

A List of Free Legal Service Providers has been given to you. For information regarding the status of your case, call toll free 1-800-898-7180

LIMITATION ON DISCRETIONARY RELIEF FOR FAILURE TO APPEAR

(X) 1. You have been scheduled for a removal hearing, at the time and place set forth on the attached sheet. Failure to appeal for this hearing other that because of exceptional circumstances beyond your control** will result in your being found ineligible for certain forms of relief under the Immigration and Nationality Act (see Section A. below) for a period of ten (10) years after the dated of entry of the final order of removal.

( ) 2. You have been scheduled for any asylum hearing, at the time and place set forth on the attached notice. Failure to appear for this hearing other that because of exceptional circumstances beyond your control** will result in your being found ineligible for certain forms of relief under the Immigration and Nationality Act (see Section A. Below) for a period of ten (10) years from the dated of your scheduled hearing.

( ) 3. You have been granted voluntary departure from the United States pursuant to section 240B of the Immigration and Nationality Act, and remaining in the United States beyond the authorized date will result in your being found ineligible for certain forms of relief under the Immigration and Nationality Act (see Section A. Below) for ten (10) years from the dated of the scheduled departure. Your Voluntary departure bond, if any, will also be breached. Additionally, if you fail to voluntarily depart the United States within the time period specified, you shall be subject to a civil penalty of not less than $ 1,000 and not more than $5,000.

** the term "exceptional circumstances" refers to circumstances such as serious illness of the alien or death of an immediate relative of the alien, but not including less compelling circumstances.

A. THE FORMS OF RELIEF FROM REMOVAL FOR WHICH YOU WILL BECOME INELIGBLE ARE:

1) Voluntary departure as provided for in section 240B of the Immigration and Nationality Act;

2) Cancellation of removal as provided for in section 240A of the Immigration and Nationality Act; and

3) Adjustment of status or change of status as provided for in Section 245, 248 or 249 of the Immigration and Nationality Act.

This written notice was provided to the alien in English. Oral notice of the contents of this notice must be given to the alien in his/her native language, or in a language he/she understands by the Immigration Judge.

Date: Feb 23, 1999

Immigration Judge: _____ or Court Clerk: _____

CERTIFICATE OF SERVICE

THIS DOCUMENT WAS SERVED BY:MAIL (M) PERSONAL SERVICE (P)

TO: [ ] ALIEN [ ] ALIEN c/o Custodial Officer [X] ALIEN'S ATT/PEP [X] INS

DATE: 1-14-99 BY: COURT STAFF _____

Attachments: [X] EOIR-33 [ ] EOIR-28 [ ] Legal Services List [ ] Other

NOTICE OF HEARING IN REMOVAL PROCEEDINGS
IMMIGRATION COURT
1600 CALLOWHILL ST. SUITE 400
PHILADELPHIA, PA 19130

RE: MOTA-HERNANDEZ, REYNA

FILE: A74-995-962

DATE: Nov 2, 1999

TO: MARGOT S. JONES

JAY BAGIA ESQ, THE BOURSE BLDG STE 592

111 SOUTH INDEPENDENCE MALL EA

PHILADELPHIA, PA 19106

Please take notice that the above captioned case has been scheduled for a Master/Individual hearing before the Immigration Court on Dec 1, 1998 at 10:00 A.M. at

1600 Callowhill St. Suite 400

Philadelphia, PA 19130

You may be represented in these proceedings, at no expense to the Government, by an attorney or other individual who is authorized and qualified to represent persons before an Immigration Court. Your hearing date has not been scheduled earlier that 10 days from the date of service of the

Notice to Appeal in order to permit you the opportunity to obtain an attorney or representative. If you wish to be represented, your attorney or representative must appear with you at the hearing prepared to proceed. You can request an earlier hearing in writing.

Failure to appear at your hearing except for exceptional circumstances may result in one or more of the following actions:

1) You may be taken into custody by the Immigration and Naturalization Service and held for further action.

2) Your hearing may be held in your absence under section 240 (b) (5) of the Immigration and Nationality Act. An order or removal will be entered against you if the Immigration and Naturalization Service established by clear, unequivocal and convincing evidence that a) you or your attorney has been provided this notice and b) you are removable.

IF YOUR ADDRESS IS NOT LISTED ON THE NOTICE TO APPEAR, OR IF IT IS NOT CORRECT, WITHIN FIVE DAYS OF THIS NOTICE YOU MUST PROVIDE TO THE IMMIGRATION COURT PHILADELPHIA, PA THE ATTACHED FORM EOIR-33 WITH YOUR ADDRESS AND/OR TELEPHONE NUMBER AT WHICH YOU CAN BE CONTACTED REGARDING THESE PROCEEDINGS. EVERYTIME YOU CHANGE YOUR ADDRESS AND/OR TELEPHONE NUMBER, YOU MUST INFORM THE COURT OF YOUR NEW ADDRESS AND/OR TELEPHONE NUMBER WITHIN 5 DAYS OF THE CHANGE

ON THE ATTACHED FORM EOIR-33. ADDITIONAL FORMS EOIR-33 CAN BE OBTAINED FROM THE COURT WHERE YOU ARE SCHEDULED TO APPEAR. IN THE EVENT YOU ARE UNABLE TO OBTAIN A FORM EOIR-33, YOU MAY PROVIDE THE COURT IN WRITING WITH YOUR NEW ADDRESS AND/OR TELPHONE NUMBER BUT YOU MUST CLEARLY MARK THE ENVELOPE "CHANGE OF ADDRESS." CORRESPONDENCE FROM THE COURT, INCLUDING HEARING NOTICES, WILL BE SENT TO THE MOST RECENT ADDRESS YOU HAVE PROVIDED, AND WILL BE CONSIDERED SUFFICIENT NOTICE TO YOU AND THESE PROCEEDINGS CAN GO FORWARD IN YOUR ABSENCE.

A List of Free Legal Service Providers has been given to you. For information regarding the status of your case, call toll free 1-800-898-7180 or 703-305-1662

CERTIFICATE OF SERVICE

THIS DOCUMENT WAS SERVED BY:

MAIL (M) PERSONAL SERVICE (P)

TO: [ ] ALIEN [ ] ALIEN c/o Custodial Officer [X] ALIEN'S ATT/PEP [X] INS

DATE: 11-2-98 BY: COURT STAFF _____

Attachments: [ ] EOIR-33 [ ] EOIR-28 [ ] Legal Services List [ ] Other